



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2013-0786; A-1-FRL-9918-26-Region-1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Transit System Improvements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Massachusetts on November 6, 2013. This proposal, if finalized, would remove the design of the Red Line/Blue Line Connector as a requirement in the Massachusetts SIP, without substitution or replacement, and would implement administrative changes that lengthen the existing public process by fifteen days and replace references to the Executive Office of Transportation (EOT) with references to the Massachusetts Department of Transportation (MassDOT). This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2013-0786 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov

3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2013-0786," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier: Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2013-0786. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed

in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; Air and Climate Division, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, telephone number (617) 918-1668, fax number (617) 918-0668, email cooke.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background
- II. Massachusetts’ 2013 SIP Revision Submittal
 - A. Deletion of the Design of the Red Line/Blue Line Connector
 - B. Administrative Changes
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

I. Background

On December 9, 1991, the Massachusetts Department of Environmental Protection (MassDEP) submitted a revision to its SIP for Transit System Improvements and HOV (High Occupancy Vehicle) Lanes in the Metropolitan Boston Air Pollution Control District. This SIP revision committed the Massachusetts Executive Office of Transportation and Construction (MA EOTC)

to pursue implementation, monitoring, and enforcement of transit system improvements and HOV lanes that were identified as transportation and air quality mitigation measures in a 1990 Final Supplemental Environmental Impact Statement for the Central Artery/Third Harbor Tunnel (CA/THT) project. EPA determined five of the proposed transportation control measures (TCMs) were necessary to help achieve an air quality benefit from the CA/THT. This 1991 SIP revision included the following two new regulations: 310 Code of Massachusetts Regulations (CMR) 7.36, "Transit System Improvements;" and 310 CMR 7.37, "High Occupancy Vehicle Lanes."

This initial transit system improvement and high occupancy vehicle lanes SIP revision was approved by EPA on October 4, 1994 (59 FR 50495) and required the Transit System Improvement Projects in Table 1 to be completed and available for public use by the dates specified below:

Table 1. Commitment to Transit System Improvement Projects in 310 CMR 7.36 (state effective date December 6, 1991).

Projects must be completed and available for public use by:	Transit System Improvement Projects
December 31, 1992	<ul style="list-style-type: none"> - Lynn Central Square Station and Parking Garage, - North Station high platforms and high tracks, - Lynn Transit Station Bus Terminal.
December 31, 1994	<ul style="list-style-type: none"> - South Station Bus Terminal, - South Station Track Number 12, - Ipswich Commuter Rail Line extension to Newburyport.
December 31, 1996	<ul style="list-style-type: none"> - Old Colony Commuter Rail Line Extension, - Framingham Commuter Rail Line Extension to Worcester, - 10,000 Park and Ride and Commuter Rail parking spaces outside of the Boston core.
December 31, 1997	<ul style="list-style-type: none"> - Green Line Arborway Restoration.
December 31, 1998	<ul style="list-style-type: none"> - Blue Line platform lengthening and modernization.
December 31, 1999	<ul style="list-style-type: none"> - 10,000 Park and Ride and Commuter Rail Station Parking spaces outside of the Boston core in addition to those completed by December 31, 1996.

December 31, 2001	- South Boston Piers Electric Bus Service.
December 31, 2011	- Green Line extension to Ball Square/Tufts University, - Blue Line Connection from Bowdoin Station to the Red Line at Charles Station.

On December 13, 2006, the MassDEP submitted a revision to its SIP amending its Transit System Improvements Regulation. The revision consisted of MassDEP's final amendments to 310 CMR 7.36, "Transit System Improvements," with a state effective date of December 1, 2006. In the revised rule, three of the SIP-required projects, the Green Line Arborway Restoration, the Blue Line Connection from Bowdoin Station to the Red Line at Charles Station, and the Green Line extension to Ball Square/Tufts University, were replaced by the Fairmount Line commuter rail improvements project (construction to be completed and opened to full public use by December 31, 2011), 1,000 new park and ride parking spaces serving Massachusetts Bay Transportation Authority (MBTA) transit and commuter rail in the Metropolitan Boston Area (construction to be completed and opened to full public use by December 31, 2011), final design of the connection from the Blue Line at Government Center to the Red Line at Charles Station (final design before December 31, 2011, but no commitment to its construction), and an enhanced Green Line transit extension to Medford Hillside with a spur to Union Square (construction to be completed and opened to full public use by December 31, 2014).

On June 1, 2007, MassDEP supplemented its December 13, 2006 SIP revision with Massachusetts Executive Office of Transportation's (EOT's) amended air quality modeling analysis report ("Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions," dated

March 15, 2007) and a letter determining that EOT had met the requirements of 310 CMR 7.36(8), Determination of Air Quality Emissions Reductions, including a determination that the Fairmount Line improvements, 1,000 new park-and-ride parking spaces, and the Green Line extension to Medford Hillside with a spur to Union Square would achieve at least 110% of the emissions reductions that would have been achieved had the Arborway Restoration, Red Line/Blue Line Connector, and Green Line extension to Ball Square been constructed. EOT held a public comment period on the modeling analysis report for a 45-day period commencing on January 2, 2007. EOT then amended the report based on comments received and commenced an additional two-week public comment period on March 21, 2007, following posting in the Massachusetts' "Environmental Monitor." MassDEP also submitted EOT's responses to public comments received as part of the supplemental materials.

On November 5, 2007 (72 FR 62422), EPA published a Notice of Proposed Rulemaking for the Commonwealth of Massachusetts' December 13, 2006 SIP revision as amended by the June 1, 2007 supplement. [See EPA Docket number EPA-R01-OAR-2006-1018 at www.regulations.gov]. In evaluating the proposed replacement/substitution transit projects for the Green Line Arborway Restoration, the Red Line/Blue Line Connector, and the Green Line extension to Ball Square/Tufts University (see Table 2), EPA ensured that the substitution provisions in 310 CMR 7.36(5), Substitute Transit System Improvement Projects, which were adopted into the Massachusetts SIP, were satisfied and followed the "Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)," (EPA420-B-06-901, February 2006). As Massachusetts' TCM substitution mechanisms were approved into the SIP

prior to SAFETEA-LU's enactment, Massachusetts must continue to use its SIP-approved TCM substitution mechanisms in addition to the new SAFETEA-LU statutory provision, as applicable, to make substitutions.

Table 2. Replacement Transit System Improvement Projects in 310 CMR 7.36
(state effective date December 1, 2006).

Projects must be completed and available for public use by:	Transit System Improvement Projects to replace the Green Line Arborway Restoration, the Blue Line Connection from Bowdoin Station to the Red Line at Charles Station, and the Green Line extension to Ball Square/Tufts University:
December 31, 2011	- Fairmont Line commuter rail improvements project
December 31, 2011	- 1000 new park and ride parking spaces serving MBTA transit and commuter rail in the Metropolitan Boston Area
December 31, 2011	- Final design of the connection from the Blue Line at Government Center to the Red Line at Charles Station. [Final design but no commitment to its construction].
December 31, 2014	- Enhanced Green Line transit extension to Medford Hillside with a spur to Union Square.

On July 31, 2008 (73 FR 44654), EPA approved Massachusetts' amendments to Transit System Improvements Regulation, 310 CMR 7.36, and Definitions Regulation, 310 CMR 7.00 (with a state effective date of December 1, 2006), as a revision to the Massachusetts SIP. This revision changed completion dates of delayed transit projects, provided interim deadlines for projects, maintained requirements for interim emission reduction offsets in the event a project becomes delayed, modified the project substitution process, revised the list of required transit projects, and expanded public participation in, and oversight of, the projects. The intended effect of this action was to substitute specific transit projects and 1,000 park and ride spaces to replace certain transit projects previously approved into the SIP and to approve modifications to the delay and substitution procedures for transit projects.

EPA found that the transit measures in the December 1, 2006 Revised Transit System Improvements Regulation remained directionally sound and that all substitution projects

identified in the Regulation would collectively contribute to achieving the national ambient air quality standard for ozone and maintaining the carbon monoxide standard, thereby satisfying requirements set forth in section 110(l) of the Clean Air Act.

II. Massachusetts' 2013 SIP Revision Submittal

Massachusetts Air Pollution Control regulation 310 CMR 7.36, "Transit System Improvements" (effective December 1, 2006), is currently incorporated-by-reference into the SIP. The Commonwealth's November 6, 2013 SIP submittal requests that EPA approve the replacement of this regulation in the SIP by an amended 310 CMR 7.36, "Transit System Improvements" (effective October 25, 2013). The amended regulation: (1) deletes the SIP requirement to design the Red Line/Blue Line Connector from the Blue Line at Government Center to the Red Line at Charles Station; (2) lengthens by fifteen days the time within which MassDEP must hold a public meeting to take public comment on MassDOT's annual update and status report; and (3) replaces references to Executive Office of Transportation and EOT with Massachusetts Department of Transportation and MassDOT, respectively. These three amendments are addressed in more detail below.

EPA's role in this proposed action is to approve state choices, provided they meet the criteria of the Clean Air Act. An adequate SIP revision is one that meets the Clean Air Act requirement under section 110(l) that a SIP revision must not interfere with attainment and maintenance of national ambient air quality standards (NAAQS) or any other applicable requirement of the Act. The Commonwealth has flexibility to revise SIP-approved TCMs, provided the revisions are consistent with attaining and maintaining compliance with the NAAQS.

A. Deletion of the Design of the Red Line/Blue Line Connector

The first amendment deletes the requirement that MassDOT complete the final design of the Red Line/Blue Line Connector from the Blue Line at Government Center to the Red Line at Charles Station by December 31, 2011. Although 310 CMR 7.36(2)(i), as adopted in 2006, required MassDOT to complete the final design of the Red Line/Blue Line Connector, the regulation did not require that the project be constructed. MassDOT took a number of steps to advance the Red Line/Blue Line Connector design, including, but not limited to, allocating resources to advance the conceptual design, completing a Draft Environmental Impact Report, and forming and meeting with a working group. MassDOT has estimated that \$50 million would be needed to complete the final design, far exceeding the \$29 million last identified in the Boston Metropolitan Planning Organization (MPO) 2009 Regional Transportation Plan (RTP). MassDOT has determined that allocating additional and scarce transportation funding to the final design of the project is not justified. Therefore, in July 2011, MassDOT requested that MassDEP remove the Red Line/Blue Line Connector design from the regulation and the SIP.

SAFETEA-LU, which was signed into law on August 10, 2005, revised a number of aspects of the Clean Air Act's section 176(c) transportation conformity provisions. In addition to amendments to the transportation conformity provisions, SAFETEA-LU also added a provision to section 176(c) to allow states to substitute or add TCMs into approved SIPs without the standard SIP revision process. This allowed a streamlined process for substituting and adding TCMs to an approved SIP. Where a substitution is not proposed, however, a TCM may only be removed from an applicable SIP through a standard SIP revision. Such a SIP revision must be shown to meet Clean Air Act section 110(l) requirements (e.g., the area would have to show that

removal of the TCM would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable Clean Air Act requirement).

Since the Massachusetts SIP revision is for the removal of a SIP requirement without replacement or substitution, EPA believes the provisions of 310 CMR 7.36(5), Substitute Transit System Improvement Projects, and EPA's Guidance for Implementing the Clean Air Act Section 176(c)(8) Transportation Control Measure Substitution and Addition Provision do not apply.¹ Most importantly, as the previously approved SIP requirement is for design only, removing this requirement from the SIP will not affect the total emission reductions achieved from the projects included in the Massachusetts Transit System Improvements Regulation and would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable Clean Air Act requirement, thereby satisfying the requirements set forth in section 110(l) of the Clean Air Act. Therefore, EPA is proposing to approve this amendment.

B. Administrative Changes

EOT/MassDOT, in consultation with the MBTA, is required to develop and submit to MassDEP by July 1st of each year a report for each project required by the Transit System Improvements Regulation [310 CMR 7.36(2)(f) through (j) and any project implemented pursuant to 310 CMR 7.36(4) and (5)] in accordance with the provisions established at 310 CMR 7.36(7)(a) of the Transit System Improvements Regulation's Public Process Requirements. Following receipt of the report, MassDEP is required to conduct a public meeting to take public comment on EOT/MassDOT's update and status report. Because MassDEP is required to conduct the public meeting within 60 days of its receipt of the report, there have been conflicts with the Labor Day

¹ The guidance is available at <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09002.pdf>.

Holiday and the end of summer season. Therefore, in the revised regulation submitted on November 6, 2013, MassDEP lengthened the public meeting deadline to within 75 days of the receipt of the report to avoid these conflicts. The additional fifteen days will still result in a timely hearing on MassDOT's updates and reports, and should enable more stakeholders and members of the public to participate.

MassDEP shall continue to provide public notice at least 30 days prior to the public meeting and shall also make copies of MassDOT's annual update and status report available to the public at least 30 days prior to the public meeting. EPA finds the fifteen day extension acceptable since it will benefit the public review and comment opportunities and will not affect emissions or interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable Clean Air Act requirement. Therefore, EPA is proposing to approve this amendment. If our proposal is finalized, MassDEP will hold future public meeting on the annual update and status report within seventy-five days of MassDEP's receipt of the report. See 310 CMR 7.36(7)(b).

In addition, in the revised regulation submitted on November 6, 2013, the terms "Executive Office of Transportation" and "EOT" have been replaced with "Massachusetts Department of Transportation" and "MassDOT," respectively, to reflect Chapter 25 of the Acts of 2009. In June 2009, Governor Deval Patrick signed Chapter 25 of the Acts of 2009, "An Act Modernizing the Transportation Systems of the Commonwealth of Massachusetts," (as amended by Chapter 26 of the "Act"). This transportation reform legislation integrated transportation agencies and authorities into a new, streamlined MassDOT, which is a merger of the Executive Office of

Transportation and Public Works (EOT) and its divisions with the Massachusetts Turnpike Authority (MTA), the Massachusetts Highway Department (MHD), the Registry of Motor Vehicles (RMV), the Massachusetts Aeronautics Commission (MAC), and the Tobin Bridge, currently owned and operated by the Massachusetts Port Authority (MPA). In addition, the MBTA and Regional Transit Authorities (RTA) are subject to oversight by the new organization. The organization also assumed responsibility for many of the bridges and parkways currently operated by the Department of Conservation and Recreation (DCR).

EPA is proposing to approve these administrative changes, which do not interfere with attainment and reasonable further progress or any other applicable Clean Air Act requirement, and which will, if finalized, make the SIP consistent with State agency organization.

III. Proposed Action

EPA is proposing to approve Massachusetts' revised 310 CMR 7.36, "Transit System Improvements," submitted on November 6, 2013, as a revision to the Massachusetts SIP. This revised rule: (1) deletes the existing SIP requirement to design the Red Line/Blue Line Connector from the Blue Line at Government Center to the Red Line at Charles Station (310 CMR 7.36(2)(i)); (2) lengthens by fifteen days the time within which MassDEP must hold a public meeting to take public comment on MassDOT's annual update and status report (310 CMR 7.36(7)(b)); and (3) replaces references to Executive Office of Transportation and EOT with references to Massachusetts Department of Transportation and MassDOT, respectively.

EPA's review of the material submitted on November 6, 2013 to remove the “design only” of the Red Line/Blue Line Connector from the Massachusetts SIP; add administrative changes to lengthen portions of the public process under 310 CMR 7.36(2)(i); and update references to the appropriate State transportation agency, indicates that the proposed modifications would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable Clean Air Act requirement.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 6, 2014.

Deborah A. Szaro,
Acting Regional Administrator,
EPA New England.

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